IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14580 of 2003

with

SPECIAL CIVIL APPLICATION No 14689 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRIKABEN DINESHBHAI SHAH

Versus

SAIYEDAHMED S HADDAD OR HIS SUCCESSOR IN OFFICE

Appearance:

1. Special Civil Application No. 14580 of 2003
   MR RAVINDRA SHAH for Petitioner No. 1-10
   MRS KANAN R SHAH for Petitioner No. 1-10
   MR MAULIN R RAVAL for Respondent No. 1
   RULE SERVED BY DS for Respondent No. 2-5
2. Special Civil Application No. 14689 of 2003
   MRS KANAN R SHAH for Petitioner No. 1
   MR MAULIN R RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 23/08/2004

COMMON ORAL JUDGEMENT

1. Heard Mr.Shah, learned Counsel for the petitioners and Mr.Raval, learned Counsel for respondent No.1.

2. On 17-8-2004, this Court had passed the following order:

" Mr.Maulin Raval seeks time to place written instructions from his client as to whether the Bank is desirous to make a statement that it does not intend to seal the residential premises of the petitioners until the sale takes place and the question arises for handing over of the possession to the purchaser. Hence S. O. to 23rd August, 2004."

3. Today when the matter is further taken up for hearing, Mr.Raval places on record the letter dated 23-8-2004 received by him from respondent No.1, whereby it has been stated that respondent No.1 is not desirous to seal the premises in question for execution of the decree. However, it has been further stated that the said declaration shall be without prejudice to the rights of the Bank to sell the premises in question and to take consequential action for handing over of the possession after the sale is finalised.

4. Mr.Shah, learned Counsel appearing for the petitioners submitted that in the said letter at the earlier portion it has been mentioned that respondent No.1 believes that while attaching the property there are powers with the officer concerned to take lawful action, which would include the sealing of the premises and, therefore, he submitted that the said observations is running counter to the earlier interim order passed by this Court on 14-10-2003 in SCA No.14580/2003. The said aspect is irrelavent because interim order dated 14-10-2003 is implemented.

5. Considering the facts and circumstances and more particularly in view of the declaration made by Mr.Raval based on the letter dated 23-8-2004, which is produced on record, as respondent No.1 is not desirous to seal the premises in question, subject to the right to effect the

sale for execution of the decree in accordance with law and as, in pursuance of the interim order passed by this Court on 14-10-2003, the seals over the property are removed, it is not necessary for this Court to examine the issue for academic purpose, and as the said aspect is rendered infructuous in view of the declaration made by respondent No.1 that they are not desirous to seal the premises in question. As the challenge in this petition is for assailing the legality and validity of the action of the Bank of sealing the premises and as now the said question does not survive, both the petitions are disposed of as having become infructuous. Subject to aforesaid observation Rule discharged accordingly.

23-8-2004 (Jayant Patel, J.)

vinod